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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/336,103	06/18/1999	KAREN M. DOWNS	960296.95912	7263

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QUARLES & BRADY LLP  
411 E. WISCONSIN AVENUE  
SUITE 2040  
MILWAUKEE, WI 53202-4497

EXAMINER

WILSON, MICHAEL C

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/336,103

Applicant(s)

DOWNS, KAREN M.

Examiner

Michael C. Wilson

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☒ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 27 and 28.

Claim(s) withdrawn from consideration: 1-13, 15, 16, 18 and 27-29.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

  
MICHAEL WILSON  
PRIMARY EXAMINER

Discussion of the comments on the draft by Examiner Wilson in the response filed 4-26-04 is inappropriate. The draft is not and will not be part of the official record; the draft was for discussion purposes only. Comments by applicants' on unofficial drafts make the record unclear.

The response filed 4-26-04 should have begun with a section for support for new claim 30. E.g. claim 30, step a) has support in claim X, step a, taken with the specification at pg Y, line Z. It is noted that describing support for step d in the discussion of the 102 rejection is misplaced.

Support for claim 30, step d, "observing the development of allantoic mesoderm into blood vessels" is implicit in the teachings of pg 16, lines 1-10, which describes observing the vascularization of murine allantois.

The limitation of "observing the development of allantoic mesoderm into blood vessels" cannot be found in priority documents 60/118764, filed 2-5-99, 08/838384, filed 4-8-97 or 60/015066, filed 4-9-96. Therefore, the effective filing date of new claims 27 and 30 would be 6-18-99, the filing date of the instant application.

Proposed claims 27 and 30 will not be entered. The proposed claims would require a rejection under 102(a) using Downs November 1998. It is noted that applicants' preemptively filed a Katz declaration over Downs November 1998 to prevent such a rejection. However, the declaration is defective because it is unsigned. This informal matter cannot be addressed in a Quayle type allowance because the 102(a) rejection has not been made.

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Proposed claim 30 would overcome the pending 102 rejection over Downs 1995. Applicants observed mesoderm differentiating into endothelial cells of the blood vessels (pg 16, lines 1-10). Downs 1995 observed blood vessel formation in the allantois and used the term "vasculogenesis" to describe it. However, Downs 1995 did not teach observing mesoderm differentiating into endothelial cells of the blood vessels as claimed or that "vasculogenesis" was limited to mesoderm differentiating into endothelial cells of the blood vessels. Applicants' arguments continue to state that the term "vasculogenesis" was used in error in the Downs reference in the 102 (pg 6 of response filed 4-26-04). While such a statement cannot be supported, it is not readily apparent that "vasculogenesis" described by Downs 1995 is limited to mesoderm differentiating into endothelial cells of the blood vessels or that Downs 1995 observed mesoderm differentiating into endothelial cells of the blood vessels as claimed. Thus, the claims would be distinguished from the teachings of Downs 1995.

Inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wilson who can normally be reached on Monday through Friday from 9:00 am to 5:30 pm at 571-272-0738.

Questions of a general nature relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

If attempts to reach the examiner, patent analyst or Group receptionist are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached on 571-272-0804.

The official fax number for this Group is (703) 872-9306.

Michael C. Wilson



MICHAEL WILSON  
PRIMARY EXAMINER